

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Residential Building
Contractor's License of A-1 Roofing, Inc.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on before Administrative Law Judge Beverly Jones Heydinger ("ALJ") on February 11, 2003 for a prehearing conference. The prehearing conference was held pursuant to a Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges, dated December 30, 2002.

Beverly A. Bryant, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce ("Department"). The Respondent, A-1 Roofing, Inc., did not appear in person or by counsel. No written submissions were received.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Minnesota Dept. of Commerce, 85 Seventh Place E., Suite 500, St. Paul, MN 55101, telephone (651) 296-3528 to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUES

1. Did the Respondent perform work negligently or in breach of contract?
2. Has the Respondent been incompetent in the work performed?
3. Did the Respondent fail to respond to the Department's request for information?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On January 10, 2003, a copy of the Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges was sent by certified mail to Roy L. Thomas, A-1 Roofing, Inc., 2740 North McKnight Road, North St. Paul, MN 55109, as appears from an Affidavit of Compliance on file herein. On the same date, the same documents were sent by certified mail to the Office of the Commissioner of Commerce.

2. The Respondent did not appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

3. The Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges contained the following informational warning:

If Respondent fails to attend or otherwise appear at any pre-hearing conference, settlement conference, or hearing in this matter without the prior consent of the judge, or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved, and Respondent's building contractor's license may be revoked or suspended, and a censure and/or a civil penalty may be imposed against Respondent without further proceedings.

4. Because Respondent failed to appear, it is in default.

5. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondent under Minn. Stat. §§ 326.91, 45.027, subd. 1, 45.024, and 14.50 (2002).

2. Respondent received due, proper and timely notice of the charges against it, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of its failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. Respondent's failure to perform all contracted work in accordance with the manufacturer's specification violates Minn. Stat. §326.91, subd. 1(4).

7. Respondent's installation of the wrong size ridge vent violates Minn. Stat. §326.91, subd. 1(6).

8. Respondent's failure to respond to the Department's requests for information and the Department's orders to appear constitutes a violation of Minn. Stat. § 45.027, subd. 1a.

9. Because of the violations the Respondent is subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 326.91, subd. 1 and 45.027, subds. 6 and 7.

10. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Minnesota Department of Commerce take adverse action against Respondent's license, censure Respondent, and/or impose a civil penalty upon Respondent.

Dated this 11th day of February, 2003.

S/ Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Default

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.